

**Court No. - 16**

**Case :-** WRIT - C No. - 27806 of 2018

**Petitioner :-** Minority Educational Institutions Welfare Association

**Respondent :-** State Of U.P. And 2 Others

**Counsel for Petitioner :-** Sudhir Kumar Malviya, Rakesh Pande, Syed Fahim Ahmed

**Counsel for Respondent :-** C.S.C.

**Hon'ble Mrs. Sangeeta Chandra, J.**

*Oral*

1. Heard learned counsel for the petitioner and learned Standing Counsel who has produced instructions sent from the Secretary, Examination Regulatory Authority, Allahabad U.P. dated 21.08.2018.

2. The instructions reiterate the Government Order issued for seat sharing on the basis of interim order dated 09.02.2017 in ***Writ Petition No. 60387 of 2016 Shama Parveen & Another Vs. State of U.P. and two others.***

An interim order was passed by this Court in Shama Parveen on 09.02.2017 to the effect:

*Until further order, effect and operation of the Government order dated 10th June 2015 shall be kept in abeyance. All minority institutions in the State imparting D.El.Ed. course shall be subjected to centralized counselling process for admitting students as applicable to other institutions, however, 50% of sanctioned strength shall be filled up on their own from the minority community.*

*The order shall apply prospectively.*

4. The Court had also requested the Hon'ble The Chief Justice for nomination of the matter to be heard by a Bench dealing with the Public Interest Litigation. Thereafter there were several such judgments by

Hon'ble Single Judge and by Hon'ble Division Bench. To put the controversy at rest, the matter was referred to Larger Bench in Writ Petition No. 18243(MS) of 2017 (Eram Girls Degree College Thru Manager & Anr. vs. State of U.P. through Principal Secretary Basic Education Lko and others) and connected cases.

5. This Court noticed the interim order granted in *Shama Parveen* dated 09.02.2017 and discussed the law as laid down by Constitution Benches and Larger Benches of Supreme Court in the case of ***T.M.A. Pai Foundation and Ors. vs. State of Karnataka, P.A. Inamdar Vs. State of Maharashtra (PA Inamdar), Islamic Academy of Education and another vs. State of Karnatka (Islamic Academy)*** and thereafter clarified that the order dated 09.02.2017 passed in ***Shama Parveen*** and the observations made therein with regard to necessity of minority institutions subjecting themselves to centralized test and counselling may be followed, but the law with regard to seat sharing should not be treated to have been settled by *Shama Parveen* case. Observations with regard to seat sharing by minority unaided institutions can only be implemented if it is consensual.

6. The learned counsel for the petitioner submits that the the issue involving rights of minority to run and establish education institution of their own choice under Article 30 of the Constitution of India, the regulation of such rights by the State and its extent has been examined by a Full Bench of this Court in Writ Petition (MS) No. 18243 of 2017 (Eram Girls Degree College and Another vs. State of U.P. and others) The judgment of Full Bench was delivered on 16th of March 2018.

7. In a related case of Minority Institutions in Special Appeal Defective No. 85 of 2018 Citizen Girls College Through Secretary Vs. State of U.P. and four others a Division Bench of this Court on 27.03.2018 has clarified that after the decision of the Full Bench in the case of Eram Girls Degree

College, the observations in the order dated 09.02.2017 in Shama Parveen case should not be followed. Even after such clarifications with regard to law in unaided minority institutions running professional college. The order dated 23rd July 2018 has been issued by the Examination Regulatory Authority which is impugned in the writ petition.

8. Even though, opportunity was given to the State respondents to explain as to how the order dated 23rd July 2018 does not notice the Full Bench decision and Division Bench observations as aforesaid, the Secretary Examination, Regulatory Authority, Allahabad has reiterated the Government order dated 23rd July 2018 in the instructions.

9. The order dated 23rd July 2018 is stayed till further orders of this Court.

10. The State respondents are granted four weeks time to file counter affidavit. One week time thereafter is granted to the petitioner to file his rejoinder affidavit.

11. List this matter after five weeks.

12. The instructions sent by the respondent No. 2 are kept on record

**Order Date :- 23.8.2018**

A. Tripathi